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# Prepaid Legal Service Plans

## The Boston Conference and Other Recent Developments

By Douglass G. Boshkoff  
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In early May I attended the ABA Conference "Prepaid Legal Services and Beyond" held in Boston, Massachusetts. I hoped to obtain more information for myself and for the Group Legal Services Committee of the Indiana State Bar Association concerning developments in this rapidly changing field. The trip was certainly worthwhile. I learned a great deal and I would like to share some of this information with you.

Most difficult to convey to the readers of *Res Gestae* is the intensity of the Conference, the interest of those in attendance and the strong feelings that were sometimes expressed by speakers and members of the audience. There can be no doubt that there is a rapidly mounting interest in new systems for delivering legal services to middle class Americans and a sharp division of opinion as to how these systems should develop. The heavy attendance of Conferees coming to Boston from all over the United States (including visitors from such widely separate points as Anchorage, Alaska, Tampa, Florida and San Francisco, California) is some measure of the interest in the topics discussed. Immediately following my article is the text of a talk that Danny Jones gave at this Conference. He expresses himself quite strongly, yet I think the vigor with which he maintains his position is not untypical of many presentations given at this Conference. His article deserves your careful attention. I agree with his position that it is in the best interest of the general practitioner to take an

affirmative attitude toward developments in this field and I hope that the readers of *Res Gestae* will see the wisdom in his words.

Unfortunately, we are now in the middle of a renewed and intensified debate over whether legal services should be furnished through the medium of open or closed panel arrangements. As I indicated in my previous article in *Res Gestae*<sup>1</sup>, many lawyers oppose closed panel arrangements. The recently adopted amendment to the Taft-Hartley Act sanctioned both open and closed panel plans. The renewed controversy, much in evidence at the Boston meeting, springs from the action of the House of Delegates at the Mid-Winter meeting of the American Bar Association. Amendments to the Code of Professional Responsibility<sup>2</sup> adopted at that meeting do not subject open and closed panel arrangements to the same requirements. Chesterfield Smith, writing in the April 1974 issue of the *American Bar Association Journal*, gave us his opinion of the Houston action.

"The vehicles for House action were, first, differing recommendations by the Standing Committee on Ethics and Professional Responsibility and the Section of General Practice to amend the Code of Professional Responsibility to control closed panel plans, and second, recommendations from the Special Committee on Prepaid Legal Services to create a corporation for the continuing promotion and assistance of prepaid plans and to reiterate the

existing policy of the Association that both closed panel plans and open panel plans are approved for use in prepaid legal services plans, which recommendations the Section of General Practice either opposed or sought to modify.

"Any political process, of course, involves interaction and compromise, and it seems to me that the ultimate action of the House on the conflicting contentions was very sound. As I now see it, the results can best be understood in terms of the dynamics of the opposing interests.

"There were those in the House who categorically opposed closed panels, but apparently they recognized that they did not have the votes to carry out their opposition to its logical conclusion. Instead, they joined in amending the Code of Professional Responsibility with those who believed that the most serious dangers posed by closed panels could be eliminated, and that so regulated, closed panels could and would serve a beneficial purpose. Those who strongly favored unregulated closed panels argued that the controls set forth in the amendments were unnecessary, and would chill the use of closed panels to the detriment of the public. But on the vote of the House, they stood as a minority. The majority of the House, in thus amending the code, in my judgment did not in any way intend to reject or chill the use of the closed panel in prepaid legal services plans but only to recog-

*(Continued on page 25)*

## PREPAID LEGAL SERVICE PLANS, CURRENT REPORT

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nize and regulate the potential problems.

"The ultimate position of the House on the conflicting arguments became very clear on the very next vote when a House majority, now made up of the advocates of unregulated closed panels and those who favored the full use of closed panels so regulated as to mitigate potential dangers, adopted a resolution specifically affirming Association support for all kinds of plans that make quality legal services more readily available to the public if these services are delivered in full accord with ethical standards. The House, acting through the same majority, also voted to create an American Prepaid Legal Services Institute, a portion of whose directors would be selected from closed panel plans.

"Thus, it is crystal clear that the American Bar Association now affirmatively encourages both open and closed panels as appropriate devices for the delivery of legal services, both in prepaid legal services plans and in government funded legal aid for the poor. At the same time, the Association clearly indicated for the first time its belief that closed panels can be structured so that professional standards can be fully maintained.

"I personally believe that existing closed panel plans will have no difficulty in complying fully with the recently promulgated ethical standards, but at the same time, I am equally convinced that if those controls prove to be unnecessarily stringent, they will be promptly relaxed. It is my hope that everyone involved will try very hard to make them work for the benefit of both the consumer of legal services and the legal profession."

My impression, based mostly upon the discussion I heard in Boston is that the competing interests were not as harmoniously reconciled as Presi-

dent Smith suggests. The Houston amendments were often criticized by panel participants and members of the audience. And this criticism continues. The Subcommittee on Representation of Citizen Interests of the United States Senate Committee on the Judiciary has, since last September, been holding hearings on a variety of topics. The focus of the Subcommittee's inquiry should be of immediate concern to all practicing lawyers. The Subcommittee is taking a close look at the quality of services available to Americans and the cost of these services. On May 14th of this year the Subcommittee's attention was specifically directed to the Houston amendments. Robert Conner-ton, General Counsel of the Laborers International Union charged that these changes in the disciplinary code would prevent prepaid legal services plans from being put into effect despite the facilitating amendments of the Taft-Hartley Act. At the same hearing Bruce Franklin, Deputy Assistant Attorney General suggested that changes adopted at Houston raised "possible anti-trust questions."<sup>3</sup> It is obvious that we are going to hear a great deal of talk about this matter in the coming months and I fear that the discussion is going to be rather strident. I hope that we can all keep in mind the ideal to which all surely subscribe, that the organized bar has a responsibility to provide legal service to the public at the lowest cost consistent with high quality service.

Open panel vs. closed panel is an emotional and potentially divisive issue which was certainly in evidence at the Boston meeting. However, it was far from the only topic covered at the Conference. Quite a bit of attention was paid to the economics, as contrasted with the ethics, of various new systems for the delivery of legal services. Several speakers suggested that lawyers were going to have to be much more careful in their accounting systems because of the new billing procedures needed for the prepaid legal services plans. I heard a great deal of talk about how the cost of legal services might be kept with-



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in reasonable levels and an often voiced concern that we will see an increase in legal fees occasioned by the advent of group legal service plans which will parallel the increase we have seen in medical fees. Speakers were not sure that the experience in the medical field provides a good analogy for legal insurance, but if it does the hope was expressed that we can learn from the doctors' experience how best to keep the cost of legal services down and the quality up.

This is a rapidly changing field. Every few months I hope to bring you some information on group legal service plans through the pages of *Res Gestae*. And, once again, I urge you to give careful consideration to Danny Jones' message.

Douglass G. Boshkoff

<sup>1</sup> "Prepaid Legal Service Plans in Indiana" *Res Gestae*, Feb. 1974, pp. 14-17.

<sup>2</sup> DR 2-103.

<sup>3</sup> N.Y. Times, May 15, 1974, p. 24.